

EXHIBIT 8

CERTIFIED COPY

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FAROUK SYSTEMS INC.

vs.

**AG GLOBAL PRODUCTS, LLC
d/b/a FHI HEAT, LLC and
SHAUKY GULAMAN**

CIVIL ACTION NO.:

4:15-cv-00465

VIDEOTAPED DEPOSITION OF DARLENE ALLISON, VOL. I

Taken on January 26, 2016



Court Reporting • Video • Trial Presentation

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Darlene Allison

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FAROUK SYSTEMS INC.)	
)	
)	
VS.)	CIVIL ACTION NO.:
)	4:15-cv-00465
)	
AG GLOBAL PRODUCTS, LLC)	
d/b/a FHI HEAT, LLC and)	
SHAUKY GULAMANI)	

ORAL AND VIDEOTAPED DEPOSITION OF

DARLENE ALLISON

January 26, 2016

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF DARLENE ALLISON,
produced as a witness at the instance of the Defendants,
and duly sworn, was taken in the above-styled and
numbered cause on the 26th day of January, 2016, from
1:19 p.m. to 6:15 p.m., before Abigail Guerra, CSR, in
and for the State of Texas, reported by machine
shorthand, at the offices of Mr. Andrew Pearce, Boyar
Miller, One Grove Street, 2925 Richmond Avenue, 14th
Floor, Houston, Texas, pursuant to the Federal Rules of
Civil Procedure and the provisions stated on the record
or attached hereto.

Darlene Allison

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A P P E A R A N C E S

FOR THE PLAINTIFF:
FAROUK SYSTEMS INC.

Mr. Andrew Pearce
Boyar Miller
One Grove Street
2925 Richmond Avenue
14th Floor
Houston, Texas 77098
Phone: (713) 850-7766

FOR THE DEFENDANTS:
AG GLOBAL PRODUCTS, LLC d/b/a FHI HEAT, LLC and SHAUKY
GULAMANI

Mr. Matthew L. Seror
Buchalter Nemer
1000 Wilshire Boulevard
Suite 1500
Los Angeles, California 90017
Phone: (213) 891-0700

ALSO PRESENT:
Mr. Jason Rumsey
Mr. Avery Gross, Videographer

Darlene Allison

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Darlene Allison

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1 THE REPORTER: Good afternoon. Pursuant to
2 Federal Rule of Civil Procedure 30(b)(5)(A), I am
3 required to begin the deposition with the following
4 on-the-record statement: My name is Abigail Guerra. I
5 am a certified shorthand reporter with the offices of
6 eLitigation Services, Incorporated, located at 645 West
7 Ninth Street, 110-200, Los Angeles, California 90015.
8 The date is January 26, 2016, and the time is 1:19 p.m.

9 This deposition is taking place at One Grove
10 Street, 2925 Richmond Avenue, 14th Floor, Houston, Texas
11 77098. Present today is the deponent, Ms. Darlene
12 Allison.

13 I will now administer the oath.

14 (Witness sworn.)

15 THE REPORTER: Also present today are Counsel,
16 Mr. Matthew L. Seror with Buchalter Nemer, and Mr.
17 Andrew Pearce with Boyar Miller, and Avery Gross, the
18 videographer.

19 THE VIDEOGRAPHER: Abby, thank you. Again,
20 we're still on the record. This is videotape No. 1 in
21 the videotaped deposition of Ms. Darlene Allison in the
22 matter of Farouk Systems vs. AG Global Products doing
23 business as FHI Heat.

24 This is being heard before the USDC Southern
25 District of Texas Court, Houston Division, Case

Darlene Allison

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1 No.. 4:15-CV-00465. It's the matter number A2208-0015.

2 The deposition is being held at the law offices
3 of Boyar Miller, 2925 Richmond Avenue, 14th Floor,
4 Houston, Texas. The witness has been sworn, so you may
5 proceed.

6 MR. SEROR: Thank you.

7 DARLENE ALLISON,

8 having been first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. SEROR:

11 Q. Good afternoon, Ms. Allison.

12 A. Good afternoon.

13 Q. Can you please state and spell your name for the
14 record?

15 A. Darlene, D-A-R-L-E-N-E, Allison, A-L-L-I-S-O-N.

16 Q. Great.

17 And you understand that you're under oath today?

18 A. Yes.

19 Q. Okay. That's the same oath that you would take
20 in the court of law?

21 A. Yes.

22 Q. Okay. Have you ever had your deposition taken
23 before?

24 A. No.

25 Q. Okay. I'm going to go over a couple ground

Darlene Allison

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1 on the page, Subject Image No. 1.

2 A. Okay.

3 Q. Do you recognize that image?

4 A. Yes.

5 Q. Okay. And what is it?

6 A. It's a -- a true artist.

7 Q. And is that a post that Farouk Systems put on
8 Facebook?

9 A. Yeah.

10 Q. Okay. And where did that image originate from?

11 A. The image itself was purchased through
12 Shutterstock where Farouk has an account. We have a
13 subscription to the Shutterstock stock images.

14 Q. So let's -- let's look -- you said Farouk has a
15 subscription to Shutterstock?

16 A. Yes.

17 Q. And what is your familiarity, if any, with
18 Shutterstock?

19 A. I just know it's a -- where you can order a
20 different type of images.

21 Q. A clipart library kind of thing?

22 A. A clipart-type situation.

23 Q. And was that something that, if you're aware,
24 Cindy Lott used frequently?

25 A. Yes.

Darlene Allison

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1 see?

2 A. Yes.

3 Q. Okay. And how did that differ than what we're
4 looking at here?

5 A. The color -- of course, I know this is black and
6 white, but you mean the original with their stock was?

7 Q. Yes. Yes.

8 A. How is this one different?

9 Q. Correct.

10 A. It has the -- of course, you can't tell by the
11 color, that was changed, and then the quote, the "true
12 artist" quote, she inserted that.

13 Q. So the version that she originally got from
14 Shutterstock had the scissors and the brushes on top?

15 A. Uh-huh.

16 Q. It had a bar on the top that those elements were
17 included, and it had that hair kind of flowing down --

18 A. Right.

19 Q. -- and that's what she got from Shutterstock,
20 and then if I understand you correctly, you're telling
21 me that what Cyndi added was the quote?

22 A. Yes.

23 Q. And she also changed the color?

24 A. Correct.

25 Q. Is that -- and that's all she changed?

Darlene Allison

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1 to do with it if she wanted to.

2 Q. Okay. And where did the quote that's listed
3 here, where did that quote originate from?

4 A. I believe it's from the Internet.

5 Q. Do you know where?

6 A. No. I know you can Google -- and she told me
7 this as well. You can Google salon quotes.

8 Q. And you'd find it there?

9 A. Yes.

10 Q. And she got it from Googling?

11 A. Yes.

12 Q. She didn't create this quote?

13 A. Not to my knowledge, but I don't know if that's
14 in the true exact -- I don't know if it was changed, but
15 I don't know that to my knowledge.

16 Q. In any of your discussions with her, did she say
17 she changed the verbiage of the quote in any way?

18 A. She did not say.

19 Q. Did she say if she changed the punctuation of
20 the quote in any way?

21 A. She didn't say.

22 Q. Okay. What about the font?

23 A. She didn't say.

24 Q. Okay. So am I correct in saying that the only
25 thing she told you she did to create Subject image No. 1

Darlene Allison

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1 is obtain an image from Shutterstock, change the colors,
2 and add a quote, correct?

3 A. Yes.

4 Q. Okay.

5 MR. PEARCE: You want to take a quick break and
6 I think I can get you that email thread for you --

7 MR. SEROR: Yeah, let's do that.

8 MR. PEARCE: -- before you move off of this?

9 MR. SEROR: That's fine. I'm going to use the
10 restroom while we're on break.

11 THE VIDEOGRAPHER: Going off the record at 2:04.

12 (A break was taken from 2:04 p.m. to 2:11
13 p.m.)

14 THE VIDEOGRAPHER: Back on the record at
15 2:11 p.m.

16 Q. (BY MR. SEROR) Okay. And after -- during our
17 short break, Counsel did give me an email chain here,
18 which I will take a look at, but as far as the
19 scheduling issue, we're going to suspend the deposition
20 of Ms. Allison right now and pick up another one of the
21 PMK witnesses now because she has a scheduling issue.
22 She needs to get out of here by a certain time. So
23 we're going to accommodate that schedule, suspend this
24 deposition, and pick it up when we're done with the
25 other -- the other deposition.

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1 MR. PEARCE: We -- we appreciate you doing that,
2 Matt.

3 MR. SEROR: Yeah.

4 THE WITNESS: Thanks, Matt.

5 THE VIDEOGRAPHER: Shall we go off the record?

6 MR. SEROR: Please.

7 THE VIDEOGRAPHER: Okay. We're going off the
8 record. It's the end of this part of Ms. Allison's
9 deposition at 2:12 p.m.

10 (Proceedings concluded at 2:12 p.m.)

11 THE VIDEOGRAPHER: Back on the record at
12 5:11 p.m. This is the continuation of Ms. Darlene
13 Allison.

14 You may proceed.

15 (BY MR. SEROR) Thank you.

16 Good afternoon, Ms. Allison. Thank you for --
17 for joining us again. We've had a break, and we're
18 going to pick back up, and I'm going to try to pick up
19 seamlessly, but I probably won't, so there they may be a
20 couple of repeats, but I'll certainly do my best.

21 A. Okay.

22 Q. Before we took our break, we are talking Subject
23 Image No. 1, and if you want get back in front of you
24 Exhibit 36, Page 2 of 36, which is going to be the image
25 -- the images, I should say. I believe it's this

Darlene Allison

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1 document.

2 A. This one, yeah.

3 Q. Okay. And we were talking about -- we were
4 talking about Ms. Lott's source for the quote on this,
5 "A true artist wears it, walks it, and breathes it." Do
6 you remember that -- that testimony?

7 A. Yes.

8 Q. Okay. We're saying how you spoke with Cyndi
9 Lott, and it was your understanding that she got this
10 quote from another website. You could Google salon
11 quotes, and some stuff would come up; is that right?

12 A. That's correct.

13 Q. And that's where you believe she obtained it?

14 A. Yes.

15 Q. And then she took it and added it to the clip
16 art image she got from Shutterstock and then changed
17 some colors; is that right?

18 A. Yes.

19 Q. Okay. And do you know if Ms. Lott obtained
20 permission or authorization from anybody to use the
21 quote that appears on this image?

22 A. I think they're available to anybody to --

23 Q. And that's -- oh, I'm sorry. Go ahead.

24 A. I think they're available to anybody to use on
25 the Internet.

Darlene Allison

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1 link?

2 A. Yes.

3 Q. Okay. And did that link you to a Shutterstock
4 website?

5 A. Yes.

6 Q. Okay. And is the image you saw -- I'll ask you.
7 What is the image that you saw when you clicked on that
8 link?

9 A. On the Shutterstock, it's the one we discussed
10 earlier that had more of a different color. It was a
11 peach color. It was just the image, no language, no
12 quote.

13 Q. So it was the -- a square image with -- and it
14 had a color on it, and then there was top horizontal bar
15 across the top which had a different color?

16 A. Yes.

17 Q. And there were a comb and scissors and another
18 brush lined up in a linear fashion on that horizontal
19 bar?

20 A. Yes, sir.

21 Q. And then there's kind of black hair graphic, so
22 to speak, kind of going across the entire image?

23 A. Yes.

24 Q. Okay. And that's what you saw when you clicked
25 on that Shutterstock link?

Darlene Allison

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1 A. Yes.

2 Q. And then she says, "It's probably on Facebook,
3 too, I just missed it."

4 Do you know what she's referring to here when
5 she says, "It's probably on Facebook"?

6 A. I'm not sure. What she means.

7 Q. Did you ever have any follow-up discussions with
8 her on that point?

9 A. No.

10 Q. Okay. So then she says "their post," and is
11 that the FHI heat post?

12 A. Yes.

13 Q. Okay. And then did you click on that link?

14 A. Yes.

15 Q. Okay. And then she says, "My original
16 creation." There's another link, correct?

17 A. Yes.

18 Q. And is that the one that we're looking at in
19 Paragraph E of Exhibit 36?

20 A. Yes.

21 Q. Okay. On Pinterest they just have the same
22 graphic pinned from Instagram. Do you see that?

23 A. Yes.

24 Q. And there are two links to what appear to be
25 Pinterest pages?

Darlene Allison

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1 guess, I'd say probably filing a lawsuit.

2 Q. And were you involved in the filing of that
3 lawsuit?

4 A. No, sir.

5 Q. Okay. You didn't draft it or review draft in
6 any way?

7 A. No, sir.

8 Q. Okay. So now I'd like to move on to Subject
9 Image No. 2, which again you'll see pictured on
10 Exhibit 36, Paragraph F.

11 A. Okay.

12 Q. Okay. Now, do you recognize this image?

13 A. Yes.

14 Q. And how do you recognize it?

15 A. That was included in Cyndi's email.

16 Q. And that was the email we just looked at?

17 A. Yes.

18 Q. And was that email the first time you recall
19 seeing this image?

20 A. It was the first time I saw it. She brought it
21 to our attention.

22 Q. Okay. Are you -- are you a Facebook user?

23 A. No.

24 Q. No. Okay. I was going to ask you -- are you
25 active on any social media?

Darlene Allison

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1 A. Sometimes I'll look at Instagram, but not
2 really, no.

3 Q. That's fair. My only -- and I wasn't meaning to
4 pry.

5 My only question is whether you are familiar
6 with Farouk Systems putting out these kinds of images on
7 social media?

8 A. Am I aware of it?

9 Q. Yes.

10 A. I know that we do it, yes, sir.

11 Q. Okay. Now, do you know where this image,
12 Subject Image No. 2, where it came from?

13 A. I think Cyndi said it was also under the salon,
14 where you can search on the Internet, the salon quotes,
15 hair salon quotes.

16 Q. So would I be accurate to assume that Cyndi Lott
17 put this together? This image together?

18 A. Yes.

19 Q. And she told you that she put this image
20 together?

21 A. Yes.

22 Q. Did she do it on some sort of computer program?

23 A. I don't know.

24 Q. And does that -- with respect to Subject Image
25 No. 1, do you know if she developed that with a computer

Darlene Allison

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1 program?

2 A. The language on that?

3 Q. Well, I know, she got the template for it from

4 Shutterstock, but then you said she added the quote.

5 I'm just wondering if you know physically how she was

6 able to superimpose the text on that graphic.

7 A. I don't know other than I know it's a vector

8 file, and she's able to manipulate.

9 Q. Okay. Okay. So -- so going to Subject Image

10 No. 2, do you know how Cyndi developed this image?

11 A. No.

12 Q. Okay. Do you know where any of the various

13 elements came from?

14 A. No. I just remember she told me it was a custom

15 creation that she did.

16 Q. Okay. So Cyndi said it was custom creation?

17 A. Yes.

18 Q. And when did she tell you that?

19 A. Probably early last year sometime. I don't know

20 exactly the date.

21 Q. Would it have been roughly around when those

22 emails were being sent we were looking at?

23 A. Possibly.

24 Q. Okay. Did she say what was custom about it?

25 A. The snips of hair at the bottom. I know she

Darlene Allison

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1 added that, and I believe she said changed the logo and
2 maybe the placement of the quote.

3 Q. When you say "logo," what are referring to?

4 A. Not the logo. I'm sorry. The -- the language
5 on top of the image. Whatever you call this. The
6 quote.

7 Q. Okay.

8 A. The quote. I'm sorry.

9 Q. So the scissors and snips of hair?

10 A. Yes. And then the "snips of wisdom," she added
11 that.

12 Q. And that's on the top right hand portion?

13 A. Yes.

14 Q. And you said she added that?

15 A. Yes.

16 Q. And then the quote is also obviously there?

17 A. Yes.

18 Q. Okay. And is it your understanding that Cyndi
19 is the one who took the quote and the "snips of wisdom"
20 and the scissors and the hair and put it altogether into
21 this final image?

22 A. Yes.

23 Q. And do you have that understanding based on your
24 conversation with her?

25 A. Yes.

Darlene Allison

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1 Q. Okay. And did she tell you that the hair and
2 the scissors, that element you see on the bottom of this
3 image, if that was a common image or graphic she used on
4 social media posts?

5 A. She did not say.

6 Q. Do you know if that's common image that she used
7 to use on social media?

8 A. I don't know.

9 Q. What about the "snips of wisdom"? Do you know
10 if that is a -- a -- if that's verbiage that she would
11 frequently put on social media posts?

12 A. Yes, she did.

13 Q. She did?

14 A. Uh-huh.

15 Q. Okay. And do you have -- do you know that from
16 conversations with her?

17 A. Yes.

18 Q. Okay. So as you understand, Farouk Systems
19 didn't buy this image, correct?

20 A. I don't think so, no.

21 Q. Okay. And the individual -- like the scissors
22 and the hair, do you know if Cyndi hand drew that or if
23 she got those images from other sources?

24 A. I don't know.

25 Q. Do you know if she got it from Shutterstock?

Darlene Allison

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1 A. She didn't say.

2 Q. Okay. So when was this post put on Farouk's
3 social media?

4 A. I don't know the date.

5 Q. Okay. Do you know approximately when?

6 A. No, I don't.

7 Q. Okay. Do you know on what social media
8 platforms this image was posted on?

9 A. I don't know off the top of my head, no.

10 Q. Okay. Was it on -- do you know if it was
11 Facebook?

12 A. It could be. I don't know. It could be
13 Facebook, Instagram, Twitter, any of those that we used.
14 I don't know for certain which exact sites.

15 Q. Do you know how many times this image was used?

16 A. No, sir, I don't.

17 Q. Do you know if this image was ever displayed on
18 your website?

19 A. I don't know that.

20 Q. Do you know if this image was ever displayed
21 with or on a product?

22 A. I have not seen that.

23 Q. The quote that's here is a Pablo Picasso quote,
24 correct?

25 A. That's correct.

Darlene Allison

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1 Q. Okay. Do you know if Cyndi ever obtained any
2 sort of authorization from Pablo Picasso or anyone
3 associated with Pablo Picasso to use his quote in this
4 manner?

5 A. I don't know.

6 Q. Okay. I think you testified earlier that Farouk
7 Systems frequently uses quotes in social media posts; is
8 that right?

9 A. Yes.

10 Q. Are they usually done under this "snips of
11 wisdom" verbiage?

12 A. That was something that Cyndi created, the
13 "snips of wisdom."

14 Q. Okay. And I want to show you what we've
15 previously marked as Exhibit 39. It should be in your
16 stack probably here. Here it is.

17 A. Okay.

18 Q. Exhibit 39. Please take a look at that. Now,
19 this appears to be -- well, let me ask you: Do you know
20 what these collection of pages are?

21 A. It looks like various quotes, various "snips of
22 wisdom."

23 Q. Okay. And does this appear that they were
24 posted on the Farouk Systems's Facebook page?

25 A. According to the language at the bottom, yes.

Darlene Allison

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1 Lott approved Subject Image No. 2 before it was posted?

2 A. I don't know.

3 Q. And I asked you, and I think you said, that you
4 were generally aware of -- well, no. I don't know if I
5 asked you.

6 At some point in time, did you search this
7 quote?

8 A. The Picasso quote?

9 Q. Yes.

10 A. I didn't search for it specifically, no.

11 Q. Okay. Are you aware that third parties are also
12 using this quote?

13 A. I have no idea.

14 Q. Okay. Is your understanding that Farouk Systems
15 has the exclusive right to use the Picasso quote?

16 A. Do we have the authority to use it?

17 Q. The exclusive right.

18 A. Exclusive right? I don't know.

19 Q. Okay. Do you believe you have the authority to
20 use it?

21 A. Yes.

22 Q. And what do you base that understanding on?

23 A. Because I think a lot of these quotes are
24 available to anybody on the Internet.

25 Q. And that's what you base your understanding as

Darlene Allison

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1 to the authority?

2 A. Yes.

3 Q. Okay. And I think I asked you this, but I'm not
4 sure. Did Farouk Systems use this quote or this image
5 in connection with any specific product?

6 A. Not to my knowledge.

7 Q. Okay.

8 MR. SEROR: Let's go off the record for a
9 moment.

10 THE VIDEOGRAPHER: Going off the record at 5:59.

11 (A break was taken from 5:59 p.m. to 6:01
12 p.m.)

13 THE VIDEOGRAPHER: Back on the record. It's
14 6:01.

15 (BY MR. SEROR) Okay. And before I conclude my
16 questioning, I just had a brief conversation with
17 counsel, and Plaintiff is not producing a witness today
18 or this week in response to Topics 5, 11, and 17 of the
19 Deposition Notice, all of which seek a person most
20 knowledgeable related to damages sustained by Plaintiff
21 as a result of the alleged copyright infringement.

22 Counsel and I have spoken on the topic, and
23 Counsel has indicated the reason he's not going to be
24 present a witness on this topic is that the only damages
25 being sought by plaintiff on the copyright claims is

Darlene Allison

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1 injunctive relief and statutory damages as provided on
2 the Copyright Act. So with that agreement in place --
3 and I understand his objection, and that's fine, and
4 we'll move on.

5 Is that accurate, Andrew?

6 MR. PEARCE: Agreed.

7 (BY MR. SEROR) Okay. So let's just finish up. Now,
8 Ms. Allison, I appreciate your patience. You also
9 designated with respect to communications with third
10 parties related to each of these images. Are you
11 aware -- I'm going to focus on Subject Image 1, first --
12 are you aware of whether Farouk Systems has received any
13 communications from any third parties related to Subject
14 Image No. 1?

15 A. I don't think so.

16 Q. Okay. And that would include anybody
17 communicating with you with respect to the quote or any
18 of the other imagery on that, correct?

19 A. Correct.

20 Q. Okay. And have you -- or said more clearly --
21 has Farouk Systems communicated with any third party
22 aside from in the context of this lawsuit, to plaintiff --
23 to Defendant by filing the lawsuit with respect to
24 Subject Image No. 1?

25 A. No.

EXHIBIT 9

Stuart Feldshon
Volume I

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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ORAL AND VIDEOTAPED DEPOSITION OF

STUART FELDSHON

January 28, 2016

Volume 1

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Stuart Feldshon
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FOR THE PLAINTIFF:
FAROUK SYSTEMS INC.

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GULAMANI

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ALSO PRESENT:
Mr. Jason Rumsey
Mr. Avery Gross, Videographer

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Volume I

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1 THE REPORTER: Good morning. Pursuant to
2 Federal Rule of Civil Procedure 30(b)(5)(A), I am
3 required to begin the deposition with the following
4 on-the-record statement. My name is Abigail Guerra. I
5 am a certified shorthand reporter with the offices of
6 eLitigation Services, Inc., located at 645 West Ninth
7 Street, 110-200, Los Angeles, California 90015. The
8 date is January 28, 2016, and the time is 9:16 a.m.
9 This deposition is taking place at One Grove Street,
10 2925 Richmond Avenue, 14th Floor, Houston, Texas 77098.
11 Present today is the deponent, Mr. Stuart Feldshon. I
12 will now administer the oath.

13 (Witness sworn.)

14 Also present today are counsel Mr. Matthew L. Seror
15 with Buchalter Nemer and Mr. Andrew Pearce, with Boyar
16 Miller, and Jason Rumsey; and Avery Gross, the
17 videographer.

18 THE VIDEOGRAPHER: This begins file No. 1 in the
19 video deposition of Mr. Stuart Feldshon. Again, we are
20 on the record. Today's date January 28th, 2016. This
21 deposition is being taken at the law offices of Boyar
22 Miller, 2925 Richmond Avenue, Houston, Texas, 77098.
23 This is the matter before the USDC Southern District of
24 Texas, Houston Division, Case No. 4:15-CV00465. The
25 matter number is A, Adam, 2208-0015. The witness has

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1 been sworn.

2 You may begin.

3 MR. SEROR: Thank you.

4 STUART FELDSHON,

5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. SEROR:

8 Q. Good morning, Mr. Feldshon.

9 A. Good morning..

10 Q. How are you?

11 A. Fine. Thank you.

12 Q. Can you please state and spell your name for the
13 record, please.

14 A. Stuart Feldshon. First name S-T-U-A-R-T. Last
15 name F-E-L-D-S-H-O-N.

16 Q. Thank you.

17 You understand that you're under oath today?

18 A. Yes.

19 Q. And that is the same oath you would take in a
20 court of law?

21 A. Yes.

22 Q. Have you ever had your deposition taken before
23 Mr. Feldshon?

24 A. Yes.

25 Q. How many times?

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1 shoulders, uh-huh, uh-huh, things like. So it's
2 important to only give verbal responses and make sure we
3 have a clear record. Do you understand that?

4 A. Yes.

5 Q. Okay. Now, is there any reason that you cannot
6 give your best and accurate testimony today?

7 A. No.

8 Q. Okay. Are you employed?

9 A. Yes.

10 Q. And where are you employed?

11 A. Farouk Systems.

12 Q. And what is your title at Farouk Systems?

13 A. Senior vice president of North American sales.

14 Q. How long have you been employed by Farouk
15 Systems?

16 A. 17-and-a-half years.

17 Q. And have you held the title of senior vice
18 president North American sales for that entire time?

19 A. No.

20 Q. Okay. So when you started at Farouk Systems --
21 and it's about 1999 thereabouts?

22 A. '98, yeah.

23 Q. '98.

24 What was your title at that point?

25 A. Regional sales manager.

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1 Q. Fair enough. Besides your -- your discussions
2 with customer service and Jan Coy, did you speak with
3 anyone else in preparation for today's --

4 A. No.

5 Q. And you said you didn't receive any documents
6 from the people you just spoke of. Did you review any
7 of your documents or any reports that you had access to
8 in order to prepare for today?

9 A. No.

10 Q. Okay. Was there anybody that you wanted speak
11 to in preparation for your deposition, but just weren't
12 able to reach them or didn't get a chance to talk to
13 them?

14 A. No.

15 Q. Okay. Okay. Now, do you understand, sir, that
16 this case is about Farouk Systems claimed trade dress?

17 A. Yes.

18 Q. And do you understand what I -- what I mean when
19 I say "trade dress"?

20 A. Yes.

21 Q. And what is your understanding of that term?

22 A. The packaging, the look of the packaging, and
23 the actual product itself.

24 Q. And is it your understanding that the trade
25 dress at issue in this case is related to one specific

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1 line of products that Farouk Systems sells?

2 A. Yes.

3 Q. And what line is that?

4 A. Our Chi tools.

5 Q. No other line that you're aware of?

6 A. No.

7 Q. Okay. And when you're talking about trade
8 dress, you said you're familiar with the term. What do
9 you understand Farouk Systems' trade dress to be?

10 A. Black and red.

11 Q. Any other colors besides black and red?

12 A. That's our main colors. That's what we have as
13 a constant for all our tools.

14 Q. Any other colors that are used that you consider
15 to be trade dress?

16 A. We have in the past. We had our Nano irons and
17 dryers, which was like a metallic-type blue.

18 Q. Was it solid blue or any other colors besides
19 that?

20 A. It had the Chi logo in red on the -- on the
21 little circle there.

22 Q. And other than this metallic blue you're talking
23 about, any other colors you can think of?

24 A. Well, we make limited editions for different
25 customers, so yes.

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1 Q. And are those -- and we got some testimony
2 yesterday which I know that you weren't here for, but we
3 heard that any given time a customer may ask for a pink
4 iron or maybe an iron with skulls on it. Is that what
5 you're referring?

6 A. Yes.

7 Q. But when we're talking trade dress, you
8 understand it to be the black and red?

9 A. Yes.

10 Q. On the Chi tool line?

11 A. Yes.

12 Q. Okay. And there are a number of different
13 products within the Chi tool line, correct?

14 A. Yes..

15 Q. Number of different -- well, strike that.

16 I'd like to turn your attention now to
17 Exhibit 41, which should also be in front of you, and
18 I'm going to ask you to turn to page page 4 of that
19 document. Now, what you're looking at -- well, let me
20 back up. Have you ever seen this document before?

21 A. Yes.

22 Q. And when did you see it?

23 A. Yesterday.

24 Q. Okay. And did you see it at any point before
25 yesterday?

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1 Q. -- but Chi Air has been around for a long, long
2 time?

3 A. Yes, yes.

4 Q. And did she give you any indication or do you
5 know, are we talking 2 years? 10 years? 20 years?

6 A. The Chi Air line is about three or four months
7 old, that particular one.

8 Q. And what about the line --

9 A. Excuse me.

10 Q. What about the line total? Is that around --
11 you said "a long time." Can you give me some estimate
12 of what you mean by "a long time"?

13 A. Chi Air has been around since 2008.

14 Q. And what about Chi Smart? Do you know how long
15 that line has been?

16 A. Chi Smart has been around, excuse me, I believe
17 since around 2010.

18 Q. Okay. Now, you indicated that all of the items
19 on this list, with the exception of Chi Smart and Chi
20 Air, you were aware of them still being sold --

21 A. Yes.

22 Q. Again, there's the Hand Shot exception, which I
23 appreciate. Okay?

24 And do you know when each one of these products
25 was first sold?

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1 A. I can give some, but I can't give all.

2 Q. Well, let's go through, do what you know.

3 A. Okay. When they first started, the original Chi
4 flat iron started in 2009.

5 Q. The Chi flat iron. Okay.

6 A. I can't give exact dates, but I can come around.

7 Q. That's fine. I'm not -- I'm not going to hold
8 you to months and days, but if you can give me -- the
9 best you can give me is fine.

10 A. Chi Pro dryer started in 2003. Chi Touch dryer
11 was 2011.

12 Q. Chi -- hold on. Chi Touch. So here there's Chi
13 Touch dryer, 2011?

14 A. Yes. Dura Chi is 2014. Chi Arc is 2012. Chi
15 Escape is 2013. I see Chi Touch twice.

16 Q. I was going to ask you about that. I see a Chi
17 Touch and a Chi Touch dryer. As far as you know, are
18 those the same thing?

19 A. Well, there's a Chi Touch 2 that we just -- we
20 just launched in 2014.

21 Q. Okay. So the Chi Touch that you said was 2011,
22 there's an original Chi Touch?

23 A. That's the 2011.

24 Q. And then there's a Chi Touch 2?

25 A. Which is the -- like the iPhone 6.

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1 well, is that just one stand-alone product as well, or
2 there's different versions?

3 A. There's different sizes.

4 Q. Different sizes of the same product?

5 A. Yes.

6 Q. Is that a curling iron?

7 A. Yes.

8 Q. Okay. So kind of similar to the one on the top,
9 the Turbo Digital Ceramic curling iron. They're
10 different sizes?

11 A. Different sizes. The Orbit is more of a styling
12 tool that you can do differential looks with.

13 Q. Okay.

14 A. It's a stand-alone wand.

15 Q. Okay. And did all those different sizes come
16 out at the same time?

17 A. Yes.

18 Q. Okay. So I also see the Chi Escape, you said in
19 2013, and I'm aware that there are different products
20 under the Chi Escape line.

21 A. Yes. The flat iron was first, and then early
22 2014 was the curling iron.

23 Q. Any other products under that Chi Escape line?

24 A. No.

25 Q. Okay. Dura Chi we talked about. The original

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1 Chi flat iron, you said that was 2001?

2 A. Yes.

3 Q. Okay. And that -- that iron has been consistent
4 in appearance since 2001?

5 A. Yes.

6 Q. The Chi Rocket hair dryer, there's only --
7 that's a stand-alone product? There's no other --
8 other --

9 A. Correct.

10 Q. -- products under that line?

11 A. No.

12 Q. The same is true for the Pro Hair dryer?

13 A. Yes.

14 Q. Okay. What about the G2 flat iron?

15 A. The G2 flat iron has two different sizes, a one
16 inch and a one-and-a-half inch.

17 Q. And I think that was one of the ones you didn't
18 know the day, but do you believe those launched at the
19 same time?

20 A. No. I believe the one inch may have been first.

21 Q. And the other one came after?

22 A. Yes.

23 Q. Okay. Besides those two, any other variations
24 on that line?

25 A. No.

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1 of any efforts that the company may take against the
2 third party for the use of the colors red and black?

3 A. No.

4 Q. Okay. Moving on to No. 32, instances of
5 confusion among consumers as between the products of
6 Farouk Systems that bear your trade dress, which we
7 talked about as red and black, and any product of the
8 defendant?

9 A. Yes.

10 Q. Okay. Are you aware of any instances of
11 confusion between the products of Farouk Systems and the
12 products of the Defendants?

13 A. Yes.

14 Q. And what instances of that confusion are you
15 aware of?

16 A. One in particular was at the IBS, New York. I
17 happened to be at that show, and one of the young ladies
18 that's an educator for us was telling a story of how she
19 was walking back to the hotel and she had on her Chi
20 shirt, and this hairdresser approached her that was in
21 town for the IBS, and said, "Oh, Chi. I love your
22 stuff. I'm a Chi salon. I love everything about you.
23 I love your new brush."

24 And this girl who's very well versed -- she owns
25 a salon herself that's all Chi -- said, "What new

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1 brush?"

2 And she said, "The new brush, the new brush that
3 you came out with."

4 She goes, "We didn't come out with a new brush."

5 And the stylist said, "Yes. The Stylus brush."

6 And she said, "No. That's not our brush. That
7 belongs to FHI."

8 And she said, "Aren't you guys the same? That's
9 what the girl at the CosmoProf store said."

10 And she said, "No. We're two different
11 companies."

12 Q. Okay. You said this occurred at the I- --

13 A. IBS, New York show.

14 Q. IBS, New York show. And when was that show?

15 A. I believe it was March of 20- -- I want to say
16 20- -- let's see. This is '16. I have so many things
17 going on. I'm going to say 2014, March of 2014 maybe.

18 MR. PEARCE: And that's one where we don't want
19 to you speculate.

20 THE WITNESS: Yeah. I'm not sure.

21 MR. PEARCE: So if you need to do something to
22 confirm.

23 THE WITNESS: I'll have to look and see because
24 we're not always in the IBS.

25 (BY MR. SEROR) Do you remember the --

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1 A. I can check my calendar now if you want.

2 Q. Maybe at a break. And I've got something else
3 that I think may help you as well, and we'll get to
4 that.

5 A. Okay.

6 Q. But you said one of your educators had this
7 conversation?

8 A. Yeah. She was telling a group of us.

9 Q. Do you remember this name of this educator?

10 A. Yes.

11 Q. What was her name?

12 A. Maria Santos.

13 Q. Okay. And so she was retelling this story, you
14 said, to a group of you?

15 A. Yes.

16 Q. And you were in that group?

17 A. Yes.

18 Q. Who else was in that group besides you and her?

19 A. I don't recall. There was just -- we had a lot
20 of people working that show, so it was a just bunch of
21 people that worked -- I guess people that worked the
22 booth. I can -- I'd have to look at the roster, but I
23 wasn't paying attention of who was around.

24 Q. Was this discussion at the Farouk booth?

25 A. She came back to the Farouk booth, yes. You

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1 know, the next day she was telling the story.

2 Q. Okay. And Ms. Santos said she was approached by
3 a customer --

4 A. A hairdresser.

5 Q. Hairdresser?

6 A. (Moving head up and down.) That saw her Chi
7 shirt.

8 Q. And do all of your educators wear Chi shirts for
9 the show?

10 A. For setting up, they do, yes.

11 Q. Okay. And do you recall if this instance with
12 this hairdresser occurred at the beginning of the show?
13 At the end of the show?

14 A. It was after set up. We had finished and she
15 was walking back to her room for the day.

16 Q. And do these shows last a couple of days?

17 A. Yeah. They go Saturday setup, and then Sunday,
18 Monday, Tuesday for IBS.

19 Q. Okay. So this would have been, like, on a
20 Saturday evening after set up?

21 A. Saturday afternoon. We were done early.

22 Q. Okay. And you were at that show?

23 A. Yes.

24 Q. Was there a particular reason why you were at
25 that show?

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1 A. Actually, I live in Connecticut, and it was an
2 easy show. We didn't have to fly in any of the VPs to
3 attend, and a lot of our customers were going to be
4 there.

5 Q. Understood.

6 So Ms. Santos recalled this -- this encounter
7 with the hairdresser, and the hairdresser said that she,
8 the hairdresser, liked the new Chi brush?

9 A. Yes..

10 Q. Okay. And Ms. Santos, I assume, is familiar
11 with Chi products?

12 A. Yes.

13 Q. Okay. And she indicated we don't have a brush?

14 A. Right.

15 Q. We don't have a new brush?

16 A. Right.

17 Q. And then the customer said, "No. It's the" --
18 did the customer identify it as the Stylus?

19 A. Yes.

20 Q. Okay. And Ms. Santos says, "Oh, that's not
21 ours"?

22 A. Correct.

23 Q. And then she then identify it as an FHI Stylus?

24 A. Yeah. She said, "That's FHI."

25 And the stylist said, "Isn't that the same

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1 company?"

2 And she said, "No."

3 (BY MR. SEROR) So Ms. Santos identified it as the
4 Stylus, and then the hairdresser responded --

5 A. No. The hairdresser said it was the Stylus, and
6 Ms. Santos knew what that was, and said, "No. We
7 don't -- that's a different -- that's FHI."

8 And that -- the hairdresser came back at her and
9 said, "Isn't that the same company?"

10 And she said, "No."

11 Q. I see.

12 Do you know -- you said Ms. Santos knew of the
13 Stylus?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. Yes.

17 Q. Do you know how she was aware of the Stylus?

18 A. No.

19 Q. Okay. Did you discuss the Stylus with her or
20 any other member of your team at Farouk Systems?

21 A. No.

22 Q. Okay. Do educators at Farouk Systems routinely
23 get educated on other products that competitors have?

24 A. No. But they -- a lot of them are salon owners.
25 So I'm sure they see a lot more than they would as

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1 educators. So Maria is a -- I've been to her salon.

2 She's a salon owner --

3 Q. Okay. And where is it?

4 A. In New Jersey.

5 Q. I'm sorry?

6 A. In New Jersey.

7 Q. Okay. And do you know the name of her salon?

8 A. Not off the top of my med.

9 Q. But it's in New Jersey?

10 A. Yes.

11 Q. And did Maria say anything to you about why this
12 hairdresser thought FHI and Farouk Systems were the same
13 company aside from the Stylus?

14 A. Yes.

15 Q. And what did she say in that regard?

16 A. She said the person at the CosmoProf store that
17 was dealing with her said it was the same company.

18 Q. So the hairdresser bought the Stylus from the
19 CosmoProf?

20 A. A CosmoProf store, yes.

21 Q. Okay. And CosmoProf is the store that BSG
22 operates?

23 A. Correct.

24 Q. Okay. And did she say when she bought it at the
25 CosmoProf store?

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1 A. No.

2 Q. Did she say what CosmoProf store she bought it
3 at?

4 A. In Pennsylvania. I don't have the exact town.

5 Q. Okay. And was the identification of a CosmoProf
6 store in Pennsylvania part of what the woman told Maria?

7 A. Yes.

8 Q. Okay. So she said, "I bought this at CosmoProf
9 store -- in the CosmoProf store in Pennsylvania"?

10 A. Yes.

11 Q. Okay. And --

12 A. And Maria asked her, "Where? Which one?"
13 And she said, "In Pennsylvania."

14 Q. Maria even asked her which one?

15 A. Yeah.

16 Q. Did she ask any other details about the store?

17 A. No.

18 Q. And she didn't ask her when she bought it?

19 A. No.

20 Q. And then this hairdresser said, "Someone at the
21 CosmoProf store said that Farouk Systems and FHI Heat
22 were the same"?

23 A. Yes.

24 Q. Okay. And did the woman tell Maria anything
25 else about why she thought Farouk Systems and FHI Heat

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1 were the same, aside from having been perhaps told that
2 by a CosmoProf employee?

3 A. She was confused -- well, she said when she
4 picked it up, she wasn't sure. She also was angry
5 because she said she's a Chi salon and she only carries
6 Chi products, that that wasn't a Chi.

7 Q. So let me back up. Was that conversation that
8 Maria had -- you said she was going back her hotel?

9 A. Yeah. The person was staying at the same hotel
10 and stopped her and saw her Chi shirt.

11 Q. Okay. And was this a conversation she had in
12 the lobby? In the elevator? Do you know?

13 A. She just said on her way back to the hotel. So
14 it could have been outside.

15 Q. So in addition to being told by the CosmoProf
16 employee that Farouk Systems and FHI Heat were the same,
17 the woman also told Maria that she was confused because
18 she picked up the Stylus, and she thought it was a Chi?

19 A. Yes.

20 Q. And did she say why, when she picked up the
21 Stylus, she thought it was a Chi?

22 A. No.

23 Q. And did she say she was confused when she picked
24 it up?

25 A. She said to Maria that when she picked it up,

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1 she thought it have a Chi. She didn't say why. So she
2 was confused, you know, she didn't hear. Being a Chi
3 salon, she said that she knows of the new products
4 because her reps come in and show her. So she was
5 asking questions about this, and when she saw -- she
6 told Maria when she saw the FHI, she asked the person at
7 the store, you know, "What is this? Is this made by
8 Chi?"

9 And she said, "Yes."

10 Q. So -- okay. So I understand. So she picked up
11 the product --

12 A. Yeah.

13 Q. -- and didn't recognize it from her meetings
14 with a Chi sales rep?

15 A. Correct.

16 Q. So she then approached the CosmoProf employee?

17 A. Yes.

18 Q. And asked for follow up?

19 A. Yes.

20 Q. And she said, "Is this a Chi? Is it not a Chi?"

21 A. She just asked, "Is this new from Chi?"

22 Q. Okay. And the CosmoProf employee said...

23 A. Yes.

24 Q. Yes, it is.

25 A. Yes.

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1 Q. Okay. And did this woman who was talking to
2 Maria identify who this CosmoProf employee was?

3 A. No.

4 Q. Okay. And in fact, did Maria ever get the name
5 of this woman?

6 A. No. She got the -- I believe she got the store
7 of where -- which store it was, but she never got the
8 name of woman.

9 Q. When you say "which store," do you mean which
10 CosmoProf store?

11 A. Yeah. What town it was in.

12 Q. Okay. And that's in Pennsylvania?

13 A. Yes.

14 Q. And what town?

15 A. I'm not sure. That's why I don't have that.

16 Q. I see. And did Maria -- do you recall Maria
17 telling you the town when she recounted the story the
18 following day?

19 A. No. She just said it was in Pennsylvania.

20 I said, "I'd like you to find out the town for
21 me if you can. Where it was."

22 Q. Okay. And do you know if Maria went and tried
23 to track down this woman again?

24 A. I don't know.

25 Q. Okay. Have you ever talked to Maria about this

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1 since the day after it happened?

2 A. Yes.

3 Q. Okay. And was she ever able to track down this
4 woman again?

5 A. No.

6 Q. Okay. Do you know if she tried to?

7 A. I don't.

8 Q. Okay. Now, did the woman who was confused in
9 the CosmoProf store, did she say whether the items she
10 bought had the name "FHI Heat" on it?

11 A. I don't recall.

12 Q. Okay. And did she say whether -- well, strike
13 that.

14 Did she say what confused her about the product?

15 A. No.

16 Q. Okay. So do you know if she was confused by the
17 letters F-H-I versus the letters C-H-I?

18 A. I don't.

19 Q. And Maria didn't ask her about that?

20 A. No.

21 Q. Okay. Do you know if she was confused between
22 FHI -- strike that.

23 Do you know if he was confused for any other
24 reasons other than -- well, no -- strike that.

25 Do you know -- I think I already asked this

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1 question.

2 You don't why she was confused?

3 A. No.

4 Q. Okay. And Maria didn't ask her?

5 A. No.

6 Q. Okay.

7 A. She was obviously confused because she thought
8 it was a Chi. I just don't know why.

9 Q. You don't --

10 A. I can speculate, but we're not doing that.

11 Q. We're not. Thank you.

12 But it could have been -- it could have been the
13 C-H-I versus the F-H-I?

14 A. Uh-huh.

15 Q. It could have been the red and black?

16 A. Uh-huh.

17 Q. It could have been any number of things?

18 A. Uh-huh.

19 Q. Okay. Yes?

20 A. Yes, yes.

21 Q. And you said you talked to Maria about this
22 after -- well, you spoke to her the next day, and you've
23 had occasion to talk to her since then.

24 A. I spoke to her like once or -- once after that
25 probably about a week or two after that to try to get

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1 some information, and I wanted the information because I
2 was having a meeting at BSG, and I wanted their people
3 to understand what was what.

4 Q. So did you go visit Maria? Did you talk to
5 her --

6 A. On the phone.

7 Q. On the phone? You called her?

8 A. Yes.

9 Q. And is it ordinary for you to call individual
10 salon owners in your current role?

11 A. If I need information, sure.

12 Q. Okay.

13 A. And Maria and I go way back. We worked together
14 for probably about 10 or 12 years.

15 Q. Understood.

16 A. She's know me as a regional.

17 Q. Understood. But you don't sell goods to Maria
18 directly, right? They go through a BSG?

19 A. She buys them through BSG, correct.

20 Q. So you spoke with Maria about a week later?

21 A. Yeah.

22 Q. And what was that discussion about?

23 A. I just wanted some more information, and she
24 gave it to me. I did have the name of the store. I can
25 look at my notes, but I brought that up because I was

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1 having a meeting with corporate, and I wanted all their
2 stores to know the difference. I didn't want this
3 confusion anymore.

4 Q. So you -- what specific questions do you
5 remember asking Marie {sic} in this follow-up call?

6 A. Do you know the name of the town the store was?
7 She had given it to me. I don't know how she got it.
8 You know, maybe she did track that person down. I don't
9 know. That's speculation. I said, "Do you know the
10 person that sold it to her?"

11 She goes, "No."

12 So I brought that information with me. I -- I
13 don't know if I had a phone call or if I saw him
14 personally, the VP of stores for BS- -- for CosmoProf
15 and said, "Look, here's what happened in Pennsylvania.
16 I don't want it happening anywhere else. Could you put
17 some type of memo saying that FHI and Chi are two
18 different companies?"

19 Q. So when you spoke with Maria about this the day
20 after it occurred, at that point she did know the town
21 in Pennsylvania that it was -- that this had occurred
22 in; is that right?

23 A. Correct. I had asked her to find it a week
24 later.

25 Q. And you asked her to follow up?

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1 A. Yeah.

2 Q. Now, did you ask her at the time she first told
3 you about this incident, or did you ask her a week
4 later?

5 A. I asked her at the time, "If you know the town,
6 that would be great." And then I followed her up with a
7 phone call, and she had the town.

8 Q. Okay. But you don't know how she got it?

9 A. No.

10 Q. Do you know how many stores CosmoProf has in
11 Pennsylvania?

12 A. I'd be speculating.

13 Q. I mean, is it a magnitude of 50? A magnitude of
14 10?

15 A. 50.

16 Q. 50. Okay. And that's across the whole state?

17 A. Across the whole state, yes.

18 Q. And Marie {sic} then gave you town --

19 A. Yes.

20 Q. -- that CosmoProf store was in?

21 A. Yes.

22 Q. And what was that town?

23 A. I -- I don't remember.

24 Q. But you said you have written notes of that
25 call?

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1 A. I believe so. I'd have to go back. It either
2 happened two years ago or -- I have to check my
3 calendar.

4 Q. Okay. Well, you know, let's clarify that,
5 because if you look at Exhibit 41, and I'd ask you to
6 turn to Page 7. And on the bottom of that, we
7 actually -- again, we're talking about interrogatories
8 -- and we asked: Identify instances of confusion.

9 And it references a March 15th.

10 A. Maybe that was it.

11 Q. Trade show in New York. Does that refreshing
12 your recollection as to this occurring in March of 2015?

13 A. I'd have to check my calendar. I don't know who
14 said -- who gave you this answer. I don't know.

15 Q. Well, let me ask you this: Did you --

16 A. It could have been March of 2015 or 2014. I'm
17 not sure.

18 Q. Okay. You said that's something you can check
19 at a break?

20 A. Yeah.

21 Q. Okay. So in addition to Marie giving you -- I
22 apologize. I've been saying Marie. It's Maria, but I
23 think we're talking about the same person here.

24 A. Yes.

25 Q. In addition to Maria giving you the name of the

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1 town on that follow up call a week later, did she give
2 you any other information on this incident?

3 A. No.

4 Q. How long was that call?

5 A. Not long. About five or ten minutes, tops.

6 Q. And was the only purpose of that call to discuss
7 this incident?

8 A. Yes.

9 Q. Okay. And if the only thing she gave you was
10 the name of this town, did you discuss anything else to
11 take up that five or ten minutes?

12 A. Probably personal things. "How's it going?"
13 You know, I know her and her husband.

14 Q. I see. Okay. So then you said that you took
15 that information. You took it to the VP of stores for
16 BSG.

17 A. Correct.

18 Q. And who's that?

19 A. A gentleman by the name of Mike Flahaven.

20 Q. Can you spell that?

21 A. F-L-A-H-A-V, either E-N or A-N. I think it's
22 A-N.

23 Q. Okay. And I think you said that you were
24 meeting with him shortly after that follow-up call with
25 Maria?

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1 A. Yes. It was either a meeting or a phone
2 meeting.

3 Q. And did you recount to Mr. Flahaven this story?

4 A. Yes.

5 Q. And did you tell him all the details you told
6 us?

7 A. Yes.

8 Q. Did you tell him any details that you haven't
9 testified to today?

10 A. No.

11 Q. Okay. And did you leave anything out that you
12 testified to today that you didn't tell him?

13 A. I got you confused.

14 Q. I apologize. Halfway through that question I
15 realized I think I confused myself.

16 What I'm wondering is: Did all the facts you
17 testified to today, did you convey that to Mr. Flahaven?

18 A. Just the Maria Santos segment. That's it.

19 Q. Yes. Okay. And obviously nothing else you've
20 testified to today. That's a fair point. I'm going to
21 clarify that.

22 With respect to the -- the incident with Maria
23 Santos, did you tell him all the facts that you've
24 recounted this morning?

25 A. Yes.

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1 Q. Okay. What was his response?

2 A. I will look into it and make sure all the stores
3 know the difference. That's what I was looking for.

4 Q. And do you know if he did that?

5 A. He's usually -- he's usually right on point. I
6 didn't check with him and say, "Did you that?" I
7 haven't had any instances since that I know of.

8 Q. Okay. And did you ever have any follow-up
9 conversations with him on this all at?

10 A. No.

11 Q. Okay. So just that one conversation?

12 A. Just that one conversation. He's usually a guy
13 that gets it done.

14 Q. Okay. And that conversation, was it about five
15 or ten minutes?

16 A. Yeah.

17 Q. Okay. At least the portion of that discussion
18 relating to the Marie Santos --

19 A. Yes, probably five minutes.

20 Q. Okay. And you talked about other things --

21 A. Sure.

22 Q. Okay.

23 A. It's not easy to get him on the phone, so I put
24 an agenda together.

25 Q. You took advantage when you get him?

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1 A. Yes.

2 Q. And -- and you said you haven't talked to him
3 about it since?

4 A. No.

5 Q. And aside from that one follow-up call that
6 you've had with Maria, have you talked with her about
7 that call since this incident?

8 A. No.

9 Q. Have you talked to her about other things?

10 A. No. No, I haven't.

11 Q. But you certainly haven't talked to her about
12 that incident?

13 A. No.

14 Q. Have you now told me everything you know about
15 that instance at the hotel in New York regarding this
16 confusion?

17 A. Yes.

18 Q. Okay. There's nothing you've left out?

19 A. No.

20 Q. Okay. So besides that one instance of
21 confusion -- well, strike that. Actually let me back
22 up.

23 Due tell anybody at Farouk Systems about this
24 incident?

25 A. Yes.

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1 Q. Who?

2 A. I told Basim. I told just about -- I guess I
3 told Andre, just tell them about the, you know, how we
4 have a problem here, and that I got separation from the
5 stores. That was my main goal was to make sure all the
6 store people knew what FHI was and what Chi was.

7 Q. So when you say you "got separation," you mean
8 that you requested BSG to make that clarification?

9 A. Yes.

10 Q. Okay. And was the purpose of you telling this
11 to either Mr. Chiavelli or Basim just to report on what
12 was going on?

13 A. Correct.

14 Q. Okay. Did you ever have any back and forth with
15 them?

16 A. Not really. Just, you know -- you know, we
17 got -- we got to make sure that doesn't happen and make
18 sure he follows up. I said he told me he would. That's
19 good enough for me.

20 Q. Okay. And that seemed good enough for them?

21 A. Yeah. At the time, yes.

22 Q. Did they ever ask you to follow up?

23 A. No.

24 Q. Okay. And did you recount for them, either
25 Basim or Mr. Chiavelli, the whole story that you've told

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1 us?

2 A. Sure.

3 Q. Okay. And did you do this during a call or an
4 in-person meeting?

5 A. In-person meeting just going over, you know,
6 going over how the IBS show went, and that stood out.

7 Q. Kind of like an update?

8 A. Yeah.

9 Q. Okay. And aside from that meeting, and was it a
10 meeting with both of them at the same time?

11 A. Separate.

12 Q. Okay. And besides those two meetings, did you
13 ever have the occasion to speak with either one of them
14 again about the Maria Santos incident?

15 A. When the lawsuit was going into effect, yes.

16 Q. Okay. And what discussions did you have at that
17 point in time?

18 A. I just repeated, you know, what happened, and he
19 goes, "Oh, that's right."

20 Q. Did reach out to you or did you --

21 A. I told him when I heard about the lawsuit. I
22 said, "Well, there's -- and, you know, there was
23 confusion." And I said, "Yeah. We had that confusion
24 in New York."

25 And he said, "Oh, that's right."

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1 Q. So you'd otherwise heard about the lawsuit?

2 A. Yeah.

3 Q. And do you recall how you heard about this
4 lawsuit?

5 A. Just through coming to work and hearing about
6 it.

7 Q. Okay. And then at that point you reached out
8 to -- was it Mr. Chiavelli or Basim?

9 A. I reached out to both of them.

10 Q. Okay. Separately?

11 A. Well, no. I'm sorry. To Mr. -- I had told
12 Basim -- I had told them about it after the show. When
13 I heard about the lawsuit, that was on the later
14 occasion.

15 Q. Okay. And --

16 A. And I had mentioned it to Basin.

17 Q. Okay. So -- and you told us that you had
18 separate conversations with each of them after the
19 show --

20 A. Yes. Just -- it just worked out that way.

21 Q. Okay. Kind of an update?

22 A. Yeah.

23 Q. Okay. And then at some point in time later, you
24 learned about lawsuit?

25 A. Correct.

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1 Q. And then you reached out Basim?

2 A. And -- well, when I saw Basim, it came into
3 context. He was talking about the confusion, and I
4 said, "Yeah. Remember the instance in New York."

5 Q. And he said, "Oh, that's right"?

6 A. That's right.

7 Q. And did it appear that he forgot about that?

8 A. No.

9 Q. Okay. And you said you were having a
10 conversation with him in the context of confusion?

11 A. Just on the -- he had -- we had talked about the
12 lawsuit and the confusion, you know, people were having,
13 and then I brought up New York.

14 Q. And --

15 A. Confusion was put in there, yes.

16 Q. Okay. And was this an in-person meeting or on
17 the phone?

18 A. In person.

19 Q. Okay.

20 A. Just -- and it was just a casual coming in,
21 saying hello, and him telling me what was going on.

22 Q. And one of the things that he told you going on
23 was the lawsuit?

24 A. Yeah. I had heard about it just from being in
25 the office.

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1 Q. Okay. And then you guys had in informal
2 discussion about it?

3 A. Yes.

4 Q. And then you said, "Oh, that's right. You
5 remember that New York thing?"

6 A. Right.

7 Q. And he's like, "Oh, yeah. That's right"?

8 A. Uh-huh.

9 Q. Any other conversations you had with him on that
10 topic?

11 A. No.

12 Q. Okay. And was that a short conversation?

13 A. Yeah.

14 Q. So we've now talked about this issue with Maria
15 Santos. Are you aware of any other instances of
16 confusion besides that one?

17 A. No.

18 Q. Okay. And in preparation for today's testimony
19 and trying to figure out if there's been instances of
20 confusion, who did you talk to to see if there'd been
21 any?

22 A. Nobody.

23 Q. Okay.

24 A. Oh, strike that, if I can. I reached out to
25 customer service if they'd had any instances of

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1 confusion.

2 Q. And when did you do that?

3 A. Yesterday.

4 Q. Who did you talk to in customer service?

5 A. I emailed Norma Smith who runs our customer
6 service.

7 Q. Did she run customer service for the whole
8 company?

9 A. Yeah.

10 Q. She's based here in Houston?

11 A. Yes.

12 Q. You said you emailed her?

13 A. Yes.

14 Q. And what did you ask Norma?

15 A. I just said, "Have you gotten any reports on any
16 confusion between FHI and Chi?"

17 And I asked the girl that works for her that's
18 in charge of returns, Brandy Campbell, have you gotten
19 any FHI back in returns or damages that people thought
20 they were giving Chi back?"

21 And the answer was "no" to both.

22 Q. So I didn't catch Brandy's last name?

23 A. Campbell.

24 Q. And she's in charge of returns?

25 A. Returns and -- yeah.

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1 Q. Is that --

2 A. Customer returns.

3 Q. Product returns?

4 A. Yes.

5 Q. Okay. And is she under the customer service
6 umbrella?

7 A. Yes. She reports to Norma.

8 Q. And you sent separate emails to Norma and
9 Brandy?

10 A. Yes. Well, with Brandy I copied Norma so
11 that...

12 Q. And both Norma -- well, let's back up. Norma
13 indicated that she was aware of no reports of customers
14 being confused?

15 A. Correct.

16 Q. Okay. And brandy indicated that she had no
17 knowledge or there'd been no returns to Farouk Systems
18 of FHI Heat products?

19 A. Correct.

20 Q. Okay. How long, if you know, has Norma been in
21 charge of customer service?

22 A. Over ten years.

23 Q. And with what about Brandy being in charge of
24 returns?

25 A. Five or six.

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1 Q. Years?

2 A. Yes.

3 Q. Do you know if the company keeps logs or
4 journals of customer service calls it gets or emails it
5 gets?

6 A. No.

7 Q. You don't know or they don't?

8 A. I don't know.

9 Q. Okay. Aside from speaking with Norma and
10 Brandy, did you reach out to anyone else to determine if
11 there's been my confusion?

12 A. No.

13 Q. Okay. So the only knowledge, the only confusion
14 your aware of is this Maria incident that we've talked
15 about?

16 A. Correct.

17 Q. Okay. I'd like to move on to the next topic,
18 which I actually think we've covered interspersed
19 throughout other things. So -- and this topic is No.
20 38, and it relates to the sales channels through which
21 Farouk Systems sell its products and that includes trade
22 dress.

23 So we've talked about the professional channels
24 that those products are sold in, and you oversee that?

25 A. Yes.